

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF COMMERCE

In the Matter of Check Processing Bureau
Legal Services

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

The above-entitled matter came on before Administrative Law Judge Kathleen D. Sheehy for a prehearing conference at 1:30 p.m. on September 10, 2009, at the Office of Administrative Hearings, 600 North Robert Street, St. Paul, MN 55101. The OAH record closed at the conclusion of the prehearing conference.

Christopher M. Kaisershot, Assistant Attorney General, Suite 1200, 445 Minnesota Street, St. Paul, MN 55101-2130, appeared on behalf of the Department of Commerce (the Department). Check Processing Bureau Legal Services (Respondent) did not appear.

STATEMENT OF ISSUES

The issue presented in this case is whether the Respondent is subject to discipline and/or civil penalties because:

(1) The Respondent engaged in unlicensed collection agency and/or collector activities, in violation of Minn. Stat. § 332.33, subd. 1 (2008);¹

(2) The Respondent made false and misleading representations in connection with the collection of a purported debt, in violation of 15 U.S.C. § 1692e (4), (5), (10), and (13), and Minn. Stat. § 332.37(12); and

(3) The Respondent failed to respond to the Department's information request, in violation of Minn. Stat. § 45.027, subds. 1a and 7(a)(3).

Based upon all of the files, records and proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On August 3, 2009, the Commissioner served by first class mail a copy of the Notice and Order for Prehearing Conference on the Respondent at 130 Church Street, Suite 276, New York, NY 10007.²

¹ All references are to the 2008 edition of Minnesota Statutes, unless otherwise noted.

2. The Notice and Order for Prehearing Conference scheduled a prehearing conference in this matter at 1:30 p.m. on September 10, 2009, at the Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota.

3. The Notice and Order for Prehearing Conference specifically notified the Respondent that failure to appear at the prehearing conference may result in a finding that Respondent is in default, that the Department's allegations may be accepted as true, and that the Respondent may be subject to discipline by the Commissioner, including revocation, suspension, censure, or the imposition of civil penalties.³

4. The Respondent did not appear for the prehearing conference, nor did Respondent contact the Administrative Law Judge prior to the prehearing conference to seek a continuance or request any other relief.

5. Because Respondent failed to appear for the prehearing conference, it is in default.

6. Pursuant to Minn. R. 1400.6000 (2007), the allegations contained in the Notice and Order for Prehearing Conference are taken as true and incorporated by reference into these Findings of Fact.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner are authorized to consider the charges against Respondent under Minn. Stat. §§ 14.50 and 45.024, subd. 1 (2008).

2. Respondent received due, proper and timely notice of the charges against it and of the time and place of the prehearing conference.⁴ This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

3. The Department has complied with all relevant procedural legal requirements.

² Affidavit of Service by U.S. Mail (Aug. 3, 2009).

³ Notice and Order for Prehearing Conference at 4.

⁴ There is no indication in the record that the Notice and Order for Prehearing Conference was returned by the U.S. Postal Service. In addition, pursuant to Minn. Stat. § 45.028, subd. 1(a), when any person, including a nonresident of the state, engages in conduct prohibited by chapter 332 of Minnesota Statutes, and the person has not filed a consent to service of process, that conduct is equivalent of an appointment of the commissioner as the person's attorney to receive service of process in any noncriminal suit, action, or proceeding against the person which is based on that conduct and is brought under chapter 332.

4. Under Minn. R. 1400.6000, a contested case may be decided adversely to a party who defaults. On default, the allegations set out in the Notice and Order for Hearing or other pleadings may be taken as true or deemed proved without further evidence. A default occurs when a party fails to appear without the prior consent of the judge at a prehearing conference, settlement conference, or a hearing or fails to comply with any interlocutory orders of the judge.

5. The Respondent is in default as a result of its failure to appear at the prehearing conference.

6. A “collection agency” means and includes agencies whose principal place of business is outside the state of Minnesota and whose collectors collect accounts within the state.⁵

7. No person shall conduct within this state a collection agency or engage within this state in the business of collecting claims for others without having first applied for and obtained a collection agency license.⁶

8. In September 2008, the Respondent attempted to collect a debt allegedly incurred in Minnesota from a Minnesota resident. In so doing, the Respondent engaged in business as a collection agency without first having obtained a license, in violation of Minn. Stat. § 332.33, subd. 1.

9. No collection agency or collector shall violate any of the provisions of the Fair Debt Collection Practices Act of 1977 while attempting to collect on any account, bill or other indebtedness.⁷ The Fair Debt Collection Practices Act prohibits the making of false, deceptive, or misleading representations in connection with the collection of any debt, including representations that nonpayment of any debt will result in arrest or imprisonment of any person; the making of a threat to take any action that cannot legally be taken or that is not intended to be taken; the use of a false representation or deceptive means to collect or attempt to collect any debt; and the false representation or implication that documents are legal process.⁸

10. In attempting to collect a debt allegedly incurred in Minnesota from a Minnesota resident, the Respondent made false representations that criminal proceedings would be initiated upon receipt of a notice from the Respondent; that state law required service of a notice issued by the Respondent before initiation of criminal proceedings; and that service of a notice from the Respondent constituted service of process for a criminal proceeding. These representations were made in violation of 15 U.S.C. § 1692e(4), (5), (10), and (13), and Minn. Stat. § 332.37, subd. 12.

⁵ Minn. R. 2870.0100, subp. 3 B (2007).

⁶ Minn. Stat. § 332.33, subd. 1.

⁷ Minn. Stat. § 332.37, subd. 12.

⁸ 15 U.S.C. § 1692e (4), (5), (10), and (13).

11. The Commissioner has authority to administer Chapter 332 of Minnesota Statutes.⁹ In connection with the duties and responsibilities entrusted to the commissioner, the commissioner may require any person to file a statement in writing as to all the facts and circumstances concerning a matter being investigated.¹⁰ The failure of any person subject to the jurisdiction of the commissioner to respond to a request for information is a violation of Minn. Stat. § 45.027, subd. 1a.

12. The Respondent failed to respond to the Commissioner's October 2008 request for information, in violation of Minn. Stat. § 45.027, subd. 1a.

13. The Commissioner may impose a civil penalty upon a person who violates any law, rule, or order related to the duties and responsibilities entrusted to the commissioner.¹¹

14. Disciplinary action against the Respondent is in the public interest.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the Commissioner take disciplinary action against the Respondent.

Dated: September 22, 2009

s/Kathleen D. Sheehy

KATHLEEN D. SHEEHY

Administrative Law Judge

Reported: Default

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Commerce will make the final decision after reviewing the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendation. Under Minn. Stat. § 14.61, the Commissioner's decision shall not be made until this Report has been available to the parties to the proceeding for at least ten (10) days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Emmanuel Munson-Regala, Deputy Commissioner, Market Assurance Division, Minnesota Department of

⁹ Minn. Stat. § 45.011, subs. 1 & 4.

¹⁰ Minn. Stat. § 45.027, subd. 1(2).

¹¹ Minn. Stat. § 45.027, subd. 6.

Commerce, 85 Seventh Place East, Suite 500, St. Paul, Minnesota 55101, (651) 296-2488, to learn about the procedure for filing exceptions or presenting argument.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law. If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.